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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,003	11/01/2001	Arun Ramachandran	COM-002.2D	3291
26717	7590	01/18/2005	EXAMINER	
RONALD CRAIG FISH, A LAW CORPORATION			SHAH, KAMINI S	
PO BOX 820			ART UNIT	
LOS GATOS, CA 95032			PAPER NUMBER	
			2142	

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	Application No. 10/003,003	Applicant(s) RAMACHANDRAN ET AL.	
	Examiner Kamini S Shah	Art Unit 2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/03/02</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6, 9-11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16, and 16 of copending Application No. 10/003,004. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claims a process for generating metrics that measures use in a usage-based resource licensing system. In the current application, the claims 1-3 and 9 for including receiving and storing usage data of one or more client of one or more resources, is similar to step 3 of claims 1 and 16 of 10/003,004 for claiming receiving and storing usage data of all resources by all licensees; and step for converting the raw usage data into metric data and storing metric data in data structure of claims 1-3 and 9, is similar to step 4 of claims 1 and 16 of co-pending application. The only difference between two the claims is the claims in the present application omits the limitation of allowing authorized

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persons to access to at least metric data (i.e. claim 1, '004) and summarizing the metrics generated for each time interval if requested or scheduled (i.e., claim 16, '004). However the omission of limitation in the present application is an obvious expedient to the one of the ordinary skill in the art and the remaining elements performs the same function as before. In re Karlson, 136 USPQ 184 (CCPA 1963). Also note Ex parte Rainu, 168 USPQ 375 (Bd. Apo. 1969). Omission of a reference element whose function is not needed would be obvious to one of the ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by 6,799,277 to Colvin.

Regarding to claimed invention of claims 1-3 and 9, Colvin teaches a process for collecting usage data and generating metrics that measure use in a usage based resource licensing system to measure usage of one or more resources, comprising:

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receiving and storing in a data structure in a usage-measuring server usage data for use by one or more clients of one or more resources using said resources and segregating said stored usage data in separate buffers, one buffer for each resource used by each client (see at least abstract, which includes software monitoring and network license metering provided by sorting information relative to software operation on a local computer or server and transferring the information to a remote computer or server at predetermined intervals); and

for each buffer of raw usage data of one resource by one client, using the appropriate distillation program to convert the raw usage data into metric data and storing said metric data in said data structure (see col. 5, lines 65- 68, including authorization “intervals” generally represent a metric for measuring use of a particular software application program. And col. col. 6, lines 5, including Interval metrics may also include individual or aggregate program execution time or number of program executions).

Regarding to claimed feature, such as, determining when it is time to convert to metrics usage data in said usage data buffer and reading configuration or pointer data which controls distillation program of claim 3, Colvin teaches security feature, which authenticates each unique user as in col. 7, lines 32-65, and as disclosed on col. 8, lines 23-39, for determining the time to contact the administrator based on time of the day for security feature.

Regarding claims 7 and 8, Colvin teaches feature that allows the reinstallation of software with re-registration or requiring an authorization code update, which is particularly suited for group or network license program. For regarding claimed step of

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generating report or invoice from time to time, Colvin teaches block 80 as in figure 1b, the user is notified of a potential licensing violation and is prompted to contact the authorized software representative.

Allowable Subject Matter

4. Claims 11 and 12 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The cited prior art does not disclose the launching of a CSU distillation process pointed to by each provisioning item and step of reading configuration data which defines the formulas in spreadsheet program used as distillation program.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamini S Shah whose telephone number is 571-272-2279. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack B Harvey can be reached on 571-272-3896. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kamini S Shah
Primary Examiner
Art Unit 2142

kss